

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, ) Case No. CR02-00223HG  
)  
Plaintiff, ) Honolulu, Hawaii  
) May 31, 2002  
)  
v. )  
)  
OLIVER KUPAU, )  
)  
Defendant. )  
\_\_\_\_\_ )

TRANSCRIPT OF ARRAIGNMENT, WAIVER OF INDICTMENT,  
ARRAIGNMENT AND PLEA  
BEFORE THE HONORABLE HELEN GILLMOR  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: U.S. ATTORNEY'S OFFICE  
By: FLORENCE NAKAKUNI, ESQ.  
300 Ala Moana Boulevard, #6100  
Honolulu, Hawaii 96850

For the Defendant: HAYDEN ALULI, ESQ.  
707 Alakea Street  
Honolulu, Hawaii 96813

Transcriber: Jessica B. Cahill  
P.O. Box 1652  
Wailuku, Maui, Hawaii 96793  
Telephone: (808)244-0776

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service

1 THE CLERK: The United States District Court for the  
2 District of Hawaii with the Honorable Helen Gillmor presiding is  
3 now in session.

4 Criminal number 00-216 defendant number (08) United  
5 States of America versus Oliver Kupau. This case is called for  
6 hearing on defendant's motion to withdraw not guilty plea and to  
7 plead anew.

8 MS. NAKAKUNI: Good morning, Your Honor, Florence  
9 Nakakuni and Beverly Wee Sameshima for the United States. And  
10 also with us is FBI Special Agent Ian Young.

11 THE COURT: Good morning.

12 MR. ALULI: Your Honor, good morning, Hayden Aluli on  
13 behalf of Mr. Oliver Kupau who is present.

14 THE COURT: Good morning. Mr. Aluli, if you and your  
15 client would approach the lectern?

16 MR. ALULI: Thank you, Your Honor.

17 THE COURT: Mr. Kupau, I am told that you wish to  
18 enter a guilty plea at this time; is that right?

19 THE DEFENDANT: Yes.

20 THE COURT: Before I accept your guilty plea there are  
21 a number of questions that I'm going to ask you to make certain  
22 that this is a valid and voluntary plea. If you don't  
23 understand my question or if at any time you wish to consult  
24 with Mr. Aluli let me know. It's important that you understand  
25 each question before you answer. Mr. Hisashima, would you swear

1 the defendant please?

2 OLIVER KUPAU

3 Was called by the Court and after having been first duly sworn  
4 was examined and testified as follows:

5 THE COURT: Mr. Kupau, do you understand you're now  
6 under oath and if you answer any of my questions falsely your  
7 answers may later be used against you in another prosecution for  
8 perjury or for making a false statement?

9 THE DEFENDANT: Yes.

10 THE COURT: What's your full legal name?

11 THE DEFENDANT: Oliver H. Kupau, III.

12 THE COURT: What's the H for?

13 THE DEFENDANT: Homelani, my middle name.

14 THE COURT: I'm sorry?

15 THE DEFENDANT: Middle name.

16 THE COURT: Yes, you want to spell it for me?

17 THE DEFENDANT: H-O-M-E-L-A-N-I.

18 THE COURT: How old are you?

19 THE DEFENDANT: Forty-five.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: Twelfth grade graduate, 12 years.

22 THE COURT: Where did you graduate from?

23 THE DEFENDANT: Castle High School.

24 THE COURT: Are you employed?

25 THE DEFENDANT: Yes, I am.

1 THE COURT: What do you do?

2 THE DEFENDANT: I'm a business representative for the  
3 Laborers Union Local 368.

4 THE COURT: How long have you done that?

5 THE DEFENDANT: I've been a member for 27 years, and  
6 I've been a business agent, executive board for 12 years now,  
7 and a trustee on two pension -- two plans, excuse me, trustee  
8 for two other stuffs.

9 THE COURT: Have you ever been treated for any mental  
10 illness or addiction to alcohol or narcotic drugs of any kind?

11 THE DEFENDANT: No.

12 THE COURT: Have you taken any drugs, medicines, or  
13 pills, or drunk any alcoholic beverage in the past 24 hours?

14 THE DEFENDANT: No.

15 THE COURT: Can you tell me briefly what's happening  
16 here today?

17 THE DEFENDANT: I'm here to enter a plea of guilty to  
18 my charges.

19 THE COURT: The Court finds the defendant is competent  
20 to understand the proceedings and to enter a knowing plea.

21 Have you had enough time to talk about your case with  
22 Mr. Aluli?

23 THE DEFENDANT: Yes, I did.

24 THE COURT: Are you satisfied with his representation  
25 of you?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that under the  
3 Constitution and laws of the United States you're entitled to a  
4 trial by a jury on the charges contained in the information?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, you have a right to have your case  
7 presented to the Grand Jury which consists of not less than 16  
8 or more than 23 impartial citizens. Members of the Grand Jury  
9 hear the facts of the case which are presented by the United  
10 States Attorney and witnesses.

11 The Grand Jury after hearing the evidence may return a  
12 finding of no bill and not issue an indictment. The finding of  
13 no bill indicates the Government has presented insufficient  
14 evidence to show probable cause that an offense was committed or  
15 that you committed it.

16 The Grand Jury may also return a finding of true bill  
17 and issue an indictment indicating the Government has produced  
18 sufficient evidence to show probable cause that an offense was  
19 committed and that you committed it. The Grand Jury may issue a  
20 finding of true bill and return an indictment with the agreement  
21 of 12 or more jurors. There will have to be at least 12 jurors  
22 who agree in order to return an indictment.

23 The Grand Jury usually meets weekly. You have a right  
24 to have your case presented to the Grand Jury. If you wish  
25 though you may waive this right. If you waive indictment the

1 charges against you will be presented by the United States  
2 Attorney by way of criminal information.

3 Do you wish to have evidence in this case presented to  
4 the Grand Jury or do you wish to waive that right?

5 THE DEFENDANT: I wish to waive all my rights.

6 THE COURT: And have you discussed this with Mr.  
7 Aluli?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: Has he answered your questions about it?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you signed a waiver of indictment  
12 indicating that you agree --

13 THE DEFENDANT: Yes.

14 THE COURT: -- to waive indictment?

15 THE DEFENDANT: Yes.

16 THE COURT: And this is your signature here, Mr.  
17 Kupau?

18 THE DEFENDANT: Yes, it is.

19 THE COURT: And yours, Mr. Aluli?

20 MR. ALULI: Yes, it is, Your Honor.

21 THE COURT: Okay. At this time, the Court is signing  
22 the waiver of indictment.

23 THE CLERK: Your Honor, the case that was set for this  
24 hearing was the old case, so I called the case under the old  
25 number. We have new information, so may I just call the case

1 all over to make it (inaudible)?

2 THE COURT: Okay. Go ahead and call the case.

3 THE CLERK: Criminal number 02-223, United States of  
4 America versus Oliver Kupau. This case is called for hearing on  
5 arraignment, waiver of indictment, and arraignment and plea.

6 THE COURT: Now, the attorneys who were present  
7 previously and the defendant are -- and the case agent are all  
8 present here, and you are in agreement that this is the case  
9 number in which we are going to proceed now, counsel?

10 MS. NAKAKUNI: Yes, Your Honor.

11 MR. ALULI: That's correct, Your Honor.

12 THE COURT: Thank you. Now, with respect to this  
13 information, Mr. Kupau, you understand that you are entitled to  
14 a trial on the charges contained in the information before a  
15 jury?

16 THE DEFENDANT: Yes.

17 THE COURT: And you understand that at a trial you  
18 would be presumed innocent and the Government has the burden of  
19 proving you guilty by competent evidence and beyond a reasonable  
20 doubt?

21 THE DEFENDANT: Yes.

22 THE COURT: You understand then that you don't have to  
23 prove you're innocent, the Government has to prove you guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that you have the right

1 to be assisted by an attorney for your defense?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you have the right  
4 to see and hear all of the witnesses and have them questioned by  
5 your attorney?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand you could object to  
8 evidence offered by the Government and that you could offer  
9 evidence on your own behalf?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that you would have the  
12 right to testify at a trial if you chose to? Do you understand  
13 you would have the right to testify at your trial or talk at  
14 your trial if you chose to?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand you also have the right  
17 not to testify or not to talk at your trial if you don't choose  
18 to?

19 THE DEFENDANT: Yes.

20 THE COURT: And you understand that if you decided not  
21 to testify or talk at your trial there would be no inference or  
22 suggestion of guilt that could be drawn from the fact that you  
23 did not testify?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand if you enter a plea of

1 guilty and if I accept your plea there will be no trial?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand you will have waived or  
4 given up your right to a trial as well as the other rights  
5 associated with the trial that we're talking about here?

6 THE DEFENDANT: Yes.

7 THE COURT: You understand that the charge in the  
8 indictment, Count 1, is a felony charge?

9 THE DEFENDANT: Yes.

10 THE COURT: And do you understand if your plea is  
11 accepted, and you are judged guilty of that offense that  
12 adjudication may deprive you of valuable civil rights such as  
13 the right to vote, the right to hold public office, the right to  
14 serve on a jury, and the right to possess any kind of firearm?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you currently charged with or serving  
17 a sentence for a violation of any State law, either State of  
18 Hawaii or any other State?

19 THE DEFENDANT: Yes.

20 THE COURT: And what charges are they?

21 THE DEFENDANT: That was for 1998 -- '95, '96 that was  
22 a State gambling case.

23 THE COURT: And you're on probation or what's the  
24 situation?

25 THE DEFENDANT: Yeah, I'm on probation.

1 THE COURT: Pardon?

2 THE DEFENDANT: Probation five years.

3 THE COURT: So you're still on probation for that?

4 THE DEFENDANT: Yeah, I met my person I go to my  
5 pretrial, and he told me that November it should be finished  
6 already.

7 THE COURT: Uh-huh.

8 THE DEFENDANT: Five years, yes.

9 THE COURT: Okay. Now, the sentence that you receive  
10 for this charge could run consecutively to any sentence you  
11 receive in the State charge. By that I mean the sentences are  
12 not necessarily going to be served at the same time. They may  
13 be one after the other rather than you serving them both at the  
14 same time. Do you understand what I'm saying?

15 THE DEFENDANT: No.

16 THE COURT: Okay. If you plead guilty and are found  
17 guilty of this charge you will receive some kind of a sentence  
18 for it. I don't know, at this point, what kind of a sentence,  
19 but there will be some sort of a sentence if you are adjudged  
20 guilty; you understand that part?

21 THE DEFENDANT: Yeah. Yes.

22 THE COURT: Now, you are serving a sentence of  
23 probation right now in the State Court.

24 THE DEFENDANT: Yes.

25 THE COURT: I don't know whether or not you will just

1 continue to serve probation or whether, because of this  
2 conviction, they'll revoke your probation and give you some  
3 other sentence, but your sentence right now is probation in the  
4 State?

5 THE DEFENDANT: Yeah.

6 THE COURT: Whatever sentence you get in this federal  
7 charge or if they change your sentence in State court the point  
8 I am making is that they don't necessarily have to be served at  
9 the same time. It may be that one sentence will be served after  
10 the other.

11 For example, if you got X number of months in prison  
12 for this charge, and you had probation maybe it would run after  
13 your probation was over in the State charge, or maybe it would  
14 run at the same time, or maybe you have X number of months here  
15 and the State revokes your probation and gives you X number of  
16 months in State prison, and they won't necessarily run at the  
17 same time.

18 THE DEFENDANT: Oh, yeah, okay.

19 THE COURT: One might come after the other. That's  
20 consecutively.

21 THE DEFENDANT: Right.

22 THE COURT: Concurrently means you serve them at the  
23 same time. What I am asking you is whether you understand that  
24 the -- the sentence that you receive in this case will not  
25 necessarily run at the same time as the sentence in the State

1 case. Do you understand what I'm saying?

2 THE DEFENDANT: Yes.

3 THE COURT: If you plead guilty do you understand you  
4 will have waived your right not to incriminate yourself because  
5 I will ask you questions about what you did in order to satisfy  
6 myself that you are guilty, and you'll have to talk about what  
7 you did here today. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: What I'm talking about is in order to  
10 plead guilty you're going to have to waive the Fifth.

11 THE DEFENDANT: What is the Fifth?

12 THE COURT: Fifth Amendment of, you know, right not to  
13 incriminate yourself. You'll have to talk about what you did  
14 today; you understand that?

15 THE DEFENDANT: Yeah.

16 THE COURT: The Court finds the defendant understands  
17 he has a right to a trial by a jury, the rules of substance and  
18 procedure applicable to such a trial, and his plea will be a  
19 waiver of his right to a trial, and he is willing to waive his  
20 right to trial.

21 We're going to talk about the Sentencing Commission  
22 Guidelines. United States law establishes detailed sentencing  
23 guidelines which specify sentences for people convicted of  
24 federal crimes. In most cases, the sentencing judge must impose  
25 a sentence within the guideline range. Before I accept your

1 plea of guilty it's important that you understand certain  
2 consequences of these guidelines. Have you and Mr. Aluli talked  
3 about how the Sentencing Commission Guidelines might apply in  
4 your case?

5 THE DEFENDANT: Yes, we have.

6 THE COURT: Do you understand that I will not be able  
7 to determine what guidelines apply to your case today?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand we will have to wait  
10 until after a presentence report has been completed, and you and  
11 the Government have an opportunity to read it and object to  
12 anything in it you don't agree with?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you understand that after it has been  
15 determined what guidelines apply in a case the judge has the  
16 authority in some circumstances to impose a sentence outside the  
17 guideline range? By that I mean the sentence might be worse  
18 than the guideline range or better than the guideline range. Do  
19 you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you also understand that under some  
22 circumstances you or the Government may have the right to appeal  
23 a sentence I impose?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you also understand that parole has

1 | been abolished in the federal system and if you're sentenced to  
2 | prison you will not be released early on parole?

3 |           THE DEFENDANT: Yes.

4 |           THE COURT: Do you understand if the sentence is worse  
5 | or more severe than you expected you'll still be bound by your  
6 | plea, and you won't have a right to withdraw it?

7 |           THE DEFENDANT: Yes.

8 |           THE COURT: The Court finds the defendant understands  
9 | the requirements of the sentencing guidelines and the plea of  
10 | guilty is made in accordance with his understanding. Do you  
11 | still wish to plead guilty?

12 |           THE DEFENDANT: Yes.

13 |           THE COURT: Have you received a copy of the  
14 | information naming you?

15 |           THE DEFENDANT: Yes.

16 |           THE COURT: Have you read it?

17 |           THE DEFENDANT: Yes.

18 |           THE COURT: Have you discussed it with Mr. Aluli?

19 |           THE DEFENDANT: Yes.

20 |           THE COURT: The information which was filed on May  
21 | 30th, 2002, reads as follow.

22 |           Count 1. The United States Attorney charges that on  
23 | or about March 31st, 1998, in the District of Hawaii, defendant  
24 | Oliver Kupau did knowingly and intentionally conduct and attempt  
25 | to conduct a financial transaction affecting interstate and

1 foreign commerce, to wit, the movement of United States currency  
2 which involved the proceeds of a specified unlawful activity,  
3 that is an illegal gambling business in violation of Title 18,  
4 United States Code, Section 1955.

5 And also that while conducting and attempting to  
6 conduct such financial transaction knew that the property  
7 involved in the financial transaction represented the proceeds  
8 of specified unlawful activity with the intent to promote the  
9 carrying on of the specified unlawful activity, to wit, an  
10 illegal gambling business in violation of Title 18, United  
11 States Code, Section 1955. All in violation of Title 18, United  
12 States Code, Section 1956(A)(1)(a)(i). Do you understand the  
13 charge in Count 1?

14 THE DEFENDANT: Yes.

15 THE COURT: Count 2 reads as follows. The United  
16 States Attorney for the charges that (a) as a result of the  
17 offense alleged in Count 1, defendant Oliver Kupau shall forfeit  
18 to the United States, pursuant to Title 18, United States Code,  
19 Section 982(A)(1), any and all property, real or personal,  
20 involved in such offenses or any property traceable to such  
21 property, including, but not limited, to the following: the sum  
22 of money equal to the sum of approximately \$5,100; (b) if any of  
23 the above described forfeitable property as a result of any act  
24 or omission of the defendants (1) cannot be located upon the  
25 exercise of due diligence, (2) has been transferred, or sold to,

1 or deposited with a third person, (3) has been placed beyond the  
2 jurisdiction of the Court, (4) has been substantially diminished  
3 in value, or (5) has been commingled with other property which  
4 cannot be subdivided without difficulty, it is the intent of the  
5 United States, pursuant to Title 18, United States Code, Section  
6 982(B)(1), to seek forfeiture of any other property of the  
7 defendants up to the value of the above forfeitable property,  
8 all in violation of Title 18, United States Codes, Section 982.

9 I suspect that you wanted that to read defendant?

10 MS. NAKAKUNI: Yes, Your Honor. I'm sorry that's a  
11 typo.

12 THE COURT: So, Mr. Aluli, you're in agreement that  
13 that should read defendant, singular, in the forfeiture count?

14 MR. ALULI: Yes, Your Honor.

15 THE COURT: Okay. It is orally amended as such. And  
16 this is all in violation of Title 18, United States Code,  
17 Section 982, and this information was filed on May 30th, 2000.  
18 Do you understand the charge -- the forfeiture charge in Count  
19 2, Mr. Kupau?

20 THE DEFENDANT: Yes.

21 THE COURT: Now, Mr. Kupau, we're going to turn to the  
22 possible sentences for the charges in the information. Now,  
23 with respect to Count 1, do you understand that you can receive  
24 up to a maximum term of imprisonment of 20 years, a fine of up  
25 to \$500,000, and a term of supervised release of not less than

1 three years and up to five years, and \$100 special assessment?

2 THE DEFENDANT: Yes.

3 THE COURT: And with respect to the forfeiture count,  
4 Count 2, do -- do you realize you can have a forfeiture in the  
5 amount of \$5,100 in cash or in property which constitutes the  
6 proceeds of the illegal gambling business, and it's my  
7 understanding that the \$5,100 is already in the possession of  
8 the Federal Bureau of Investigation. Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand if you were sentenced to  
11 prison and released under terms of supervised release you could  
12 be given additional time in prison if the judge finds that you  
13 have violated the conditions of supervised release?

14 THE DEFENDANT: Yes.

15 THE COURT: The Court finds that the defendant  
16 understands the nature of the charges to which the plea is being  
17 entered. The maximum possible penalty provided by law, and he  
18 understands the requirements of the sentencing guidelines, and  
19 the plea of guilty is made in accordance with this  
20 understanding.

21 Now, Mr. Kupau, has anybody threatened you or anyone  
22 else, or forced you in any way to plead guilty?

23 THE DEFENDANT: No.

24 THE COURT: Have you entered into a plea agreement  
25 between you and your attorney for the Government?

1 THE DEFENDANT: Yes.

2 THE COURT: At this time, Ms. Nakakuni, I would ask  
3 that you would describe the essential terms of the plea  
4 agreement?

5 MS. NAKAKUNI: Yes, Your Honor. The essential terms  
6 of our plea agreement with Mr. Kupau are as follows. Mr. Kupau  
7 pleads guilty to the two count information, and he acknowledges  
8 he's been charged in a separate indictment. And we agree to  
9 move to dismiss the indictment as to Mr. Kupau after his  
10 sentencing. Mr. Kupau also agrees to the factual basis for his  
11 guilty plea which is set out in paragraph eight of this plea  
12 agreement.

13 He also agrees to immediately and voluntarily forfeit  
14 the \$5,100 described in paragraph seven of this plea agreement  
15 and to take all necessary actions to implement the forfeiture  
16 and pass clear title to the monies to the United States. He  
17 also agrees that the forfeiture of the \$5,100 shall not be  
18 treated as satisfaction of any fine, reimbursement of cost and  
19 imprisonment, or any other monetary penalty this Court may  
20 impose upon him.

21 He also waives his right to appeal except under two  
22 specific circumstances; one, if this Court should depart upward  
23 in the sentencing, or based on a claim of ineffective assistance  
24 of counsel. And Mr. Kupau also agrees on this plea agreement  
25 that he will cooperate with the United States and testify

1 truthfully at any and all proceedings in which he is asked to do  
2 so. And we may move the Court to depart from the guidelines  
3 based on his substantial assistance to us, but Mr. Kupau  
4 understands that the decision as to whether to make such a  
5 motion is entirely up to us and even if we made such a motion  
6 this Court may refuse to depart from the guidelines.

7 THE COURT: Thank you, Ms. Nakakuni. Now, Mr. Aluli,  
8 you've heard what Ms. Nakakuni has outlined as the essential  
9 terms of the plea agreement. Is there anything that you would  
10 like to add or modify?

11 MR. ALULI: No, Your Honor.

12 THE COURT: Are you in agreement with the terms of the  
13 plea agreement?

14 MR. ALULI: Yes, I am.

15 THE COURT: Have you discussed it with Mr. Kupau?

16 MR. ALULI: Yes.

17 THE COURT: Do you believe he understands it?

18 MR. ALULI: I do, Your Honor.

19 THE COURT: Mr. Kupau, have you read the plea  
20 agreement?

21 THE DEFENDANT: Yes, I have.

22 THE COURT: Have you talked about it with Mr. Aluli?

23 THE DEFENDANT: Yes.

24 THE COURT: Has he answered any questions that you  
25 have?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you agree to the terms of the plea  
3 agreement?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you signed the plea agreement  
6 indicating -- showing that you agree to its terms?

7 THE DEFENDANT: Yes.

8 THE COURT: Could you point out your signature for me?  
9 You're pointing to what page number is that?

10 THE DEFENDANT: Fourteen.

11 THE COURT: And that's your signature?

12 THE DEFENDANT: Yes, it is.

13 THE COURT: Okay. Thank you. Mr. Aluli.

14 MR. ALULI: Yes, Your Honor. I would also acknowledge  
15 that my signature is below Mr. Kupau's at page 14 of the  
16 original memorandum of plea agreement.

17 THE COURT: Thank you, Mr. Aluli. If you would  
18 provide the document to Ms. Nakakuni? Thank you.

19 MS. NAKAKUNI: Yes, Your Honor, those are the  
20 signatures of Mr. Enoki, Ms. Sameshima and myself on page 14 of  
21 this plea agreement.

22 THE COURT: Okay. Thank you. And now if you would  
23 provide it to Mr. Hisashima? Thank you, Mr. Aluli. At this  
24 time the Court is receiving the plea agreement and  
25 making it part of the record.

1                   Now, Mr. Kupau, anybody attempted in any way to force  
2 you to plead guilty in this case?

3                   THE DEFENDANT: No.

4                   THE COURT: Are you pleading guilty of your own free  
5 will because you are guilty?

6                   THE DEFENDANT: Yes.

7                   THE COURT: Do you understand any agreement between  
8 Ms. Nakakuni and Mr. Aluli to recommend that a particular  
9 sentence to the Court isn't binding on the Court and on the  
10 basis of your guilty plea you can receive up to the maximum term  
11 permitted?

12                  THE DEFENDANT: Yes.

13                  THE COURT: Do you understand the Court is not  
14 required to accept a plea agreement and that I may reject it?

15                  THE DEFENDANT: Yes.

16                  THE COURT: Has anybody made any prediction, prophesy  
17 or promise to you as to what your sentence will be?

18                  THE DEFENDANT: No.

19                  THE COURT: I want to be sure that you in fact  
20 committed the crimes of which you've been accused and to which  
21 you're prepared to plead guilty. I'm going to ask Ms. Nakakuni  
22 to state the facts the Government would be prepared to prove at  
23 trial, and then I'm going to ask you to tell me in your own  
24 words what you did that makes you guilty of this charge. Ms.  
25 Nakakuni.

1 MS. NAKAKUNI: Thank you, Your Honor. If this case  
2 did go to trial the United States would offer the following  
3 evidence. First, we would call Honolulu Police Department  
4 Detective Earl Kahanui (phonetic) who was the undercover officer  
5 in this case, and he would testify to his several face to face  
6 meetings with Mr. Kupau as well as his approximately eight or so  
7 telephone conversations during the January to April 1998  
8 timeframe all occurring here on Oahu.

9 And we would also offer the consensual recordings  
10 which were made by Detective Kahanui. And obviously in  
11 particular we would offer the consensual recording on March 31,  
12 1998, and at that meeting Mr. Kupau did in fact hand to  
13 Detective Kahanui an envelope or bag, I can't remember, but the  
14 \$5,100, and you can hear the conversation, Detective Kahanui  
15 acknowledging receipt of the monies from Mr. Kupau.

16 We would also offer Detective Kahanui's consensual  
17 recordings with other individuals who were involved with Mr.  
18 Kupau, namely Randolph Mousser and James Mousser. And these  
19 recordings, in addition to the consensual recordings with Mr.  
20 Kupau himself would establish that in fact Mr. Kupau did  
21 participate in an illegal gambling business, which was  
22 cockfighting, and that four or more individuals were involved in  
23 the conduct of this business including Mr. Kupau, Mr. Randolph  
24 Mousser, Mr. James Mousser, and others, and that it was in  
25 substantial continuous operation for more than 30 days, that the

1 activities namely cockfighting and wagering on the outcome of  
2 these cockfights were in violation of Hawaii State law.

3 Also we would offer the testimony of Randolph Mousser  
4 and James Mousser and, Your Honor, their testimonies as well as  
5 the consensual recordings would also establish the interstate  
6 and foreign commerce element here namely that the gaffs or  
7 knives attached to the legs of the fighting cocks come primarily  
8 from outside the State of Hawaii, from the Philippines, and that  
9 there were participants from time to time at these cockfights  
10 who came into the District of Hawaii from outside the District  
11 of Hawaii from other States.

12 And the consensual recording between Detective Kahanui  
13 and Mr. Kupau would establish that the monies that Mr. Kupau was  
14 giving to the detective were in fact proceeds of gambling and  
15 the stated purpose which was for Detective Kahanui to help  
16 protect the cockfights. That would be the evidence, Your Honor.

17 THE COURT: Thank you. Now, Mr. Kupau, please tell me  
18 in your own words what makes you guilty of Count 1?

19 THE DEFENDANT: I am pleading guilty, Your Honor,  
20 because I did give him the -- the money -- the transaction of  
21 the money, and I did fund two derbies.

22 THE COURT: Okay. When you say you did give him the  
23 money, who did you give the money to?

24 THE DEFENDANT: Earl.

25 THE COURT: Earl who?

1 THE DEFENDANT: Koanui.

2 THE COURT: And he was the police detective?

3 THE DEFENDANT: Yes, he was.

4 THE COURT: And when did this happen?

5 THE DEFENDANT: I gave 'em to him I think was March  
6 31st.

7 THE COURT: What year?

8 THE DEFENDANT: '98.

9 THE COURT: And where did you get the money?

10 THE DEFENDANT: From the chicken fight.

11 THE COURT: And was that chicken -- how long did the  
12 chicken fight --

13 THE DEFENDANT: Last?

14 THE COURT: -- yeah, in terms of the -- not just the  
15 one fight, but the operation?

16 THE DEFENDANT: Maybe -- maybe about -- maybe 24  
17 -- maybe one day at the most.

18 THE COURT: Well, one fight lasted one day, but there  
19 were -- there was an ongoing arrangement. Was there -- was  
20 there an ongoing arrangement to have chicken fights over a  
21 longer period of time?

22 THE DEFENDANT: Can I explain about that, Your Honor?

23 THE COURT: Yes, go ahead.

24 THE DEFENDANT: Okay. I ran one in '97, I ran one in  
25 '98, and I needed one place, and I went down there, and I -- I

1 rented their place, Randy Mousser and that's what it was. It  
2 wasn't one every day activity. That's why I kind of like mad  
3 about everything, and -- and I gave them money for run -- to use  
4 his place, and it was a tribute for my dad. I know that's  
5 illegal, and it was everybody in by seven o'clock in the  
6 morning, we started at 12, and got through like maybe two or  
7 three o'clock in the morning. That's what it was, one day  
8 event. Like after was over I gave the people their money, and  
9 then I called Earl, and I met Earl, and I gave him the money.

10 THE COURT: Ms. Nakakuni.

11 MS. NAKAKUNI: Your Honor, I -- I should have added  
12 that the evidence that we would prove would alternatively  
13 establish, and if there's some disagreement as to the specific  
14 period of time, that this particular gambling opera -- this  
15 particular cock fight or gambling operation took in more than  
16 \$2,000 in any one day.

17 And I think, you know, that evidence would be clear  
18 just based on another undercover officer who we had going into  
19 the cockfights, and we could establish that for these derbies  
20 that Mr. Kupau ran that the number of -- amount -- total amount  
21 of wagers placed was in excess of \$2,000, and I think Mr. Kupau  
22 would agree with that.

23 THE DEFENDANT: Yeah.

24 THE COURT: Okay. Ms. Nakakuni, so rather than the 30  
25 day duration, \$2,000 gets you under the statute?

1 MS. NAKAKUNI: Yes, Your Honor.

2 THE COURT: Okay. So, Mr. Kupau, in terms of this  
3 particular day on March -- was March 31st the day of the chicken  
4 fight or was that the day you gave the detective the money?

5 THE DEFENDANT: The derby was on the 28th, and I -- I  
6 make 'em on the day that my dad passed away. It was a memorial  
7 derby, Your Honor.

8 THE COURT: Uh-huh.

9 THE DEFENDANT: I met him couple times.

10 THE COURT: Uh-huh. Okay. So on the day of the derby  
11 was money made on this derby in excess of \$2,000 -- more than  
12 \$2,000?

13 THE DEFENDANT: Yeah.

14 THE COURT: And where was this derby taking place?

15 THE DEFENDANT: Akima Road, Waianae.

16 THE COURT: On this Island in the State of Hawaii?

17 THE DEFENDANT: Yeah.

18 THE COURT: And the gaffs and -- and other  
19 paraphernalia did it come from out-of-state? Was it  
20 manufactured in -- out of the State of Hawaii?

21 THE DEFENDANT: Well, I -- I don't know anything about  
22 the gaffs. All I know is that a lot of people make over here in  
23 Honolulu and even up in the Islands and people buy from people.  
24 If came out from this -- I don't know about that. I don't ask  
25 the people where they buy there stuff from.

1 THE COURT: Okay. Were there people at this derby who  
2 came from outside of the United -- outside of the State of  
3 Hawaii?

4 THE DEFENDANT: Several.

5 THE COURT: Okay. You satisfied, Ms. Nakakuni?

6 MS. NAKAKUNI: Yes, Your Honor. Thank you.

7 THE COURT: Okay. Thank you. Now, as to Count 2, how  
8 much money was in the envelope that you gave to Detective  
9 Kahanui?

10 THE DEFENDANT: I said 5,400 he's saying 5,100. So he  
11 got the badge so I going with 51.

12 THE COURT: Okay, and where did that money come from?

13 THE DEFENDANT: From the fight.

14 THE COURT: Okay, and the fight we've just been  
15 talking about?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. The Court finds that based upon the  
18 statements made by the defendant under oath to this Court  
19 there's a factual basis upon which the defendant may enter his  
20 plea. How do you plead to the charge, guilty or not guilty as  
21 to Count 1?

22 THE DEFENDANT: Guilty.

23 THE COURT: And as to the forfeiture count, Count 2?

24 THE DEFENDANT: Guilty.

25 THE COURT: Since you acknowledge that you're in fact

1 guilty as charged and since you know of your right to a trial,  
2 what the maximum possible punishment is and since you are  
3 voluntarily pleading guilty, the Court at this time files the  
4 plea agreement, but reserves the determination of whether to  
5 accept the plea agreement until after an investigation and a  
6 presentence report have been prepared.

7           It's the finding of the Court in the case of United  
8 States versus Kupau that the defendant is fully competent and  
9 capable of entering an informed plea, that his plea of guilty is  
10 a knowing and voluntary plea supported by an independent basis  
11 in fact containing each of the essential elements of the  
12 offense, and his plea is now accepted, and he is now adjudged  
13 guilty of the offense.

14           Now, Mr. Kupau, you're referred to the United States  
15 Probation Office for a presentence investigation report prior to  
16 sentencing and that will assist the Court at sentencing. And I  
17 ask you to cooperate with the probation officer in giving them  
18 information for the report. And Mr. Aluli may be with you when  
19 you speak with the probation officer if you wish to have him  
20 there. Mr. Aluli, have you made an appointment yet?

21           MR. ALULI: Not yet, Your Honor.

22           THE COURT: Okay. If you would go immediately from  
23 the Court to the Probation Office to set up an appointment  
24 please?

25           MR. ALULI: Yes, Your Honor, we will.

1                   THE COURT: Thank you. Now, Mr. Hisashima, may we  
2 have a sentencing date please?

3                   THE CLERK: Yes, Your Honor. It will be on October  
4 21, 2002, at 3:00 p.m.

5                   THE COURT: Is that date acceptable to everybody?

6                   MS. NAKAKUNI: Yes, Your Honor.

7                   MR. ALULI: Yes, Your Honor.

8                   THE COURT: Okay. Now, hearing no motions to the  
9 contrary the current orders with respect to bail will remain in  
10 effect. Anything further that we need to take care of?

11                  MS. NAKAKUNI: Nothing further, Your Honor.

12                  MR. ALULI: Nothing further. Thank you, Your Honor.

13                  THE COURT: Okay. Thank you. We stand in recess.

14                  (At which time the above-entitled proceedings were  
15 concluded.)

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated this 19th day of May, 2008.

/s/ Jessica B. Cahill

Jessica B. Cahill